

### **REMARKS**

This Amendment is responsive to the Office Action dated June 4, 2007. Applicant has amended claims 23, 43, 46, and 65, and added claims 68-71. Claims 23-35 and 37-71 are pending.

#### **Summary of Examiner Interview**

In a telephonic interview initiated by Applicant on August 23, 2007, Applicant's attorney of record, Jessica H. Kwak, and Examiner Manuel discussed the present application. The parties appeared to agree that the Office Action's rejection of claims 1-11 and 13-22 was erroneous because claims 1-11 and 13-22 were previously cancelled. In addition, the parties generally discussed the requirements of independent claim 23, as well as the Woods et al. reference and the Office Action mailed on June 4, 2007. Applicant's representative noted that independent claim 23 requires a loading port that is accessible via the second housing, and a plate member that covers the loading port.

Possible amendments to independent claims 23 and 46 were discussed, such as amending claims 23 and 46 to specify that the second housing defines an aperture to expose the loading port. No exhibits were introduced during the interview, and no agreement was reached with respect to the claims.

The parties also discussed whether Examiner Manuel had considered the Declaration Under 37 C.F.R. 1.132, which Applicant originally filed with the U.S. Patent & Trademark Office on February 28, 2007. Examiner Manuel requested that Applicant submit a PTO Form 1449 or a form otherwise in compliance with 37 C.F.R. 1.98 listing Applicant's Declaration Under 37 C.F.R. 1.132.

#### **Claim Rejection Under 35 U.S.C. § 103(a)**

The Office Action rejected claims 1-11, 13-35, 38-58, and 60-67 under 35 U.S.C. § 103(a) as being unpatentable over Woods et al. (U.S. Patent Application Publication No. 2003/0114899, herein referred to as Woods) in view of Monroe et al. (U.S. Patent No. 5,527,261, herein referred to as Monroe), and further in view of Nardelli et al. (U.S. Patent Application Publication No. 2003/006863, herein referred to as Nardelli). Claims 37 and 59 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Woods in view of Monroe and Nardelli and

further in view of Greenberger et al. (U.S. Patent No. 5,355,369, herein referred to as Greenberger). First, Applicant notes that claims 1-11 and 13-22 were previously cancelled. Second, Applicant respectfully traverses the rejection of claims 23-35 and 37-67. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

### **Independent Claims 23 and 46**

For example, the applied references fail to disclose or suggest each and every element of Applicant's independent claims 23 and 46. Claims 23 and 46 recite a programmer for a medical device comprising a first circuit board placed within a first housing member, a second circuit board placed over the first circuit board, a second housing member placed over the second circuit board to substantially enclose the first and second circuit boards, a loading port accessible via the second housing member to load instructions into memory on one of the first and second circuit boards, where the second housing member defines an aperture to expose the loading port, and a plate member placed within the second housing member to cover the loading port, where the first housing member, the first circuit board, the second circuit board, the second housing member and the plate member are assembled in a stacked z-axis configuration. Claim 46 further requires that the z-axis extends in a direction substantially perpendicular to a major plane of the first circuit board.

In support of the rejection of independent claims 23 and 46, the Office Action found that Woods discloses each and every element recited in claims 23 and 46 and reasoned that it would have been obvious to one of ordinary skill in the art at the time of the invention to include a z-axis configuration as taught by Monroe and Nardelli. Applicant respectfully disagrees. Woods does not teach each and every element of Applicant's independent claims 23 and 46. For example, Woods fails to teach or suggest a loading port accessible via a second housing member to load instructions into memory on one of the first and second circuit boards, where the second housing member defines an aperture to expose the loading port.

The Office Action characterized the ROM port 247 in Woods as a loading port, the RF module 650 as a first circuit board, the display screen 240 as second circuit board, a handheld programmer 202 as a second housing member that is placed over the display screen to

substantially enclose the display screen and the RF module, and a button pad 241 as a plate member.<sup>1</sup> Applicant respectfully disagrees with this interpretation of Woods. The ROM port is not a loading port that is configured to load instructions into memory on the RF module 650 or display screen 240, and, accordingly, cannot be a loading port as recited in claims 23 and 46. The ROM port is not a port to load instructions onto memory of the RF module 650 or display screen 240, but, rather, is used to connect a serial EEPROM circuit to a processor<sup>2</sup>.

In fact, Woods fails to teach that the RF module 650 and/or display screen 240 include respective memories, and so it is unclear how the ROM port would be used to load instructions into memory within the RF module or the display screen. To the extent Woods describes memory with respect to the handheld programmer, Woods describes SRAM memory circuitry 630 and EEPROM memory circuit 646.<sup>3</sup> Neither one of these two memories is on the RF module or the display screen.

Furthermore, even if the ROM port were considered to be a loading port in accordance with claims 23 and 46, which Applicant disagrees with, Woods does not teach or suggest a second housing member that defines an aperture to expose the ROM port or a ROM port that is accessible via the second housing, as required by claims 23 and 46. In order to meet the limitations of Applicant's independent claims 23 and 46, Woods would be required to disclose a ROM port that is accessible via the handheld programmer 202, which the Office Action found to be a second housing. However, Woods fails to describe or even suggest any device configuration in which the handheld programmer 202 defines an aperture to expose the ROM port. FIGS. 7D-1 and 7D-2 of Woods, which are block diagrams of the Woods programming device, suggest that the ROM port is an internal component and is not externally accessible.

Woods also fails to describe a plate member placed at least partially over the aperture to cover the loading port, as recited by Applicant's claims 23 and 46 as amended. The Office Action found that the button pad 241 in the Woods device is a plate member. Even if the button pad 241 was a plate member, which Applicant disputes, Woods does not describe an arrangement in which the button pad is placed at least partially over an aperture defined by the handheld programmer 202, much less a button pad that is placed to cover the ROM port. Nothing in Woods indicates that upon removal of the button pad 241, the ROM port is exposed

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<sup>1</sup> Office Action at page 2.

<sup>2</sup> Woods at paragraph [0205].

<sup>3</sup> *Id.* at paragraph [0205] and FIGS. 7D-1 and 7D-2.

through an aperture defined by a housing. Therefore, Woods not only fails to disclose or suggest a housing member that defines an aperture to expose a loading port, but also fails to disclose a plate member that is placed at least partially over the aperture to cover the loading port, as required by claims 23 and 46.

In addition, Woods fails to disclose a plate member that is in a stacked z-axis configuration with the first housing member, the first circuit board, the second circuit board, and the second housing member, as recited by claims 23 and 46. The Office Action relied on Monroe and Nardelli as teaching stacked circuit boards<sup>4</sup>. Applicant disputes that there would have been any motivation to combine Monroe and Nardelli with Woods to arrive at Applicant's claimed invention. Furthermore, neither Monroe nor Nardelli teach a programmer including a plate member that is stacked in a z-axis configuration with a circuit board, where the plate member at least partially covers an aperture in a housing member to cover a loading port. Nothing in the cited references contemplates such a programmer. Because the cited references fail to even teach a loading port, it is unclear how the cited references can teach a plate member that covers a loading port and is stacked in a z-axis configuration with circuit boards and housing members.

Applicant continues to traverse the Office Action's characterization of the RF module 50 in Woods as a first circuit board and a microprocessor 620 or processor integrated circuit (IC) as a first housing member. Circuitry or a functional module within the microprocessor does not in any way constitute a "circuit board." As discussed in Applicant's Amendment in response to the Office Action mailed on July 5, 2006, a circuit board supports and/or electrically connects electronic components. Applicant maintains that the RF module does not in any way support electrical components in the same way that a circuit board supports or connects electrical components. Woods discloses that the "RF module 650 . . . connects to an antenna 652 via an RF Receiver circuit 653 and an RF transmitter circuit 654."<sup>5</sup> However, this does not in any way suggest that the RF module 650 is the circuit board that electrically connects the RF Receiver circuit 653 and an RF transmitter circuit 654 or that any circuit board connects the RF Receiver circuit 653 and an RF transmitter circuit 654.

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<sup>4</sup> Office Action at page 2.

<sup>5</sup> Woods at paragraph [0207].

The Office Action appears to be relying on an improper finding of an inherent disclosure in Woods to support the finding that the RF module 650 is a circuit board that couples or supports electrical components. The fact that a certain characteristic may be present in the prior art is not sufficient to establish the inherency of that result or characteristic.<sup>6</sup> The Office Action must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.<sup>7</sup> No reasonable support has been provided for the determination that the RF module 650 necessarily supports and/or electrically connects electronic components. The mere fact of being electrically coupled to an electrical component does not reasonably support a finding that the RF module 650 is a circuit board.

In addition, the microprocessor does not house the RF module, and, accordingly, cannot reasonably be characterized as a housing member in which a first circuit board is placed. While Woods mentions that the microprocessor or processor IC includes the RF module, Woods does not even remotely suggest that the RF module is placed within the microprocessor. Consequently, Applicant submits that the microprocessor in the Woods reference is not a housing, and the functional module (RF module) coupled to the microprocessor is not a circuit board.

Monroe, Nardelli, Greenberger fail to cure the deficiencies identified in Woods. For at least these reasons, the cited references fail to disclose or suggest each and every element of independent claims 23 and 46. Withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

### **Dependent Claims**

Claims 24-35 and 37-45 depend from claim 23, and claims 47-67 depend from claim 46. As established above, independent claims 23 and 46 are patentable over the cited references, and as a result, all claims depending therefrom are also patentable over the cited references. Applicant also traverses the rejections of dependent claims 24-35, 37-45, and 47-67. The prior art of record fails to teach each and every element of the dependent claims, and the rejection

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<sup>6</sup> *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ.2d 1955, 1957 (Fed. Cir. 1993); MPEP § 2112.

<sup>7</sup> *Ex parte Levy*, 17 USPQ.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original); MPEP 2112.

should be withdrawn. Applicant addresses some of the dependent claims below for purposes of illustration.

With respect to claims 30 and 53, the applied references fail to disclose or suggest a programmer including a first circuit board that includes a bottom side substantially adjacent to a first housing member, and an internal antenna mounted on the bottom side of the first circuit board, where the internal antenna is coupled to telemetry circuitry on the first circuit board. The Office Action characterized the RF module 650 in Woods as a first circuit board and the microprocessor as the first housing. In support of the rejection of claims 30 and 53, the Office Action stated that the processor integrated circuit 620 of Woods includes the RF module 650, which connects to an antenna via an RF receiver circuit 653 and an RF transmitter circuit 654, and therefore, Woods discloses the elements of claims 30 and 53.<sup>8</sup> However, the antenna described by Woods is not mounted on the bottom side of a first circuit board, where the bottom side is substantially adjacent to the first housing. The Office Action failed to identify how Woods discloses the recited arrangement between the antenna and first circuit board recited in claims 30 and 53.

FIG. 7D-2 of Woods illustrates an RF module 650 that is coupled to an antenna 652 that is located outside of the microprocessor 620 via RF receiver 653 and RF transmitter 654. Neither FIG. 7 D-2 nor any other description in Woods discloses an antenna 652 that is mounted to a side of RF module 650 that is adjacent to the processor 620. Accordingly, Woods cannot teach or suggest each and every element of Applicant's claims 30 and 53.

The applied references also fail to teach or suggest each and every element of Applicant's claims 31 and 54, which recite an internal antenna that defines an aperture and a battery bay that extends at least partially into the aperture. In support of the rejection of claims 31 and 54, the Office Action stated that one of ordinary skill in the art would have found it obvious to provide a battery bay for batteries in the first housing member because the unit is intended to operate on battery power.<sup>9</sup> However, claims 31 and 54 recite more than a battery, and specify that a battery bay extends at least partially into an aperture defined by an internal antenna. The Office Action has failed to address this specific arrangement of the battery bay and internal antenna. Even if Woods discloses that its programmer is battery powered, Woods does not provide a sufficient

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<sup>8</sup> Office Action at page 3.

<sup>9</sup> *Id.*

disclosure or suggestion to reasonably support a finding that the Wood programmer includes the claimed arrangement between a battery bay and internal antenna. For at least these reasons, the applied references fail to disclose or suggest the requirements of claims 31 and 54.

With respect to claims 32 and 55, the applied references fail to disclose or suggest that the first housing member includes a molded area that defines a battery bay adjacent the first circuit board. In support of the rejection of claims 32 and 55, the Office Action stated that one of ordinary skill in the art would have found it obvious to provide a battery bay for batteries in the first housing member because the unit is intended to operate on battery power.<sup>10</sup> Because the Office Action characterized the microprocessor as the first housing member and the RF module as the first circuit board, according to the Office Action's interpretation, claims 32 and 55 require that the microprocessor includes a molded area that defines a battery bay adjacent the RF module. Woods does not disclose such a microprocessor that includes a molded area. Thus, the Office Action's reliance on Woods as teaching a battery powered programmer is insufficient to teach or suggest each and every element of claims 32 and 55.

The applied references also fail to disclose or suggest an access opening in the first housing member to gain access to the battery bay for placement of batteries, as recited by claims 33 and 56. As described previously, the Office Action characterized the microprocessor as the first housing member. Therefore, according to the Office Action's interpretation, claims 33 and 56 require an access opening in the microprocessor to gain access to a battery bay for placement of batteries. Again, the Office Action's reliance on Woods as teaching a battery powered programmer is insufficient to disclose or suggest an access opening in the microprocessor to gain access to a battery bay.

For at least these reasons, the Office Action has failed to establish a prima facie case for non-patentability of Applicant's claims 23-35, 37-67 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

### **New Claims**

Applicant has added claims 68-71 to the pending application. No new matter has been added by the new claims. The applied references fail to disclose or suggest the inventions defined by Applicant's new claims, and provide no teaching that would have suggested the

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<sup>10</sup> *Id.*

desirability of modification to arrive at the claimed inventions. For example, the applied references fail to disclose or suggest a programmer that comprises a first circuit board placed within a first housing member, a second circuit board placed within a second housing member, and a loading port accessible via the second housing member, where the first housing member and the second housing member form a housing unit that substantially encloses the first and second circuit boards, as recited by claims 68 and 69. The microprocessor 620 and handheld programmer 202 in the Woods reference, which the Office Action characterized as first and second housing members, do not form a housing unit that substantially encloses first and second circuit boards. Accordingly, Woods does not teach or suggest each and every element of new claims 68 and 69.

### CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims.

In view of the clear distinctions identified above between the current claims and the applied prior art, Applicant reserves further comment at this time regarding any other features of the independent or dependent claims. However, Applicant does not necessarily admit or acquiesce in any of the rejections or the Office Action's interpretations of the applied references. Applicant reserves the right to present additional arguments with respect to any of the independent or dependent claims.

Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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